

COMPENDIUM

***THE LEMPERT-KEENE-SEASTRAND
OIL SPILL PREVENTION AND RESPONSE ACT***

AND

***SELECTED CALIFORNIA STATUTES
RELATING TO
WATER POLLUTION***

AS OF JANUARY 1, 2003

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- (1) The Incident Command Systems adapted from the systems originally developed by the FIREScope Program, including those currently in use by state agencies.
- (2) The multiagency coordination system as developed by the FIREScope Program.
- (3) The mutual aid agreement, as defined in Section 8561, and related mutual aid systems such as those used in law enforcement, fire service, and coroners operations.
- (4) The operational area concept, as defined in Section 8559.
- (b) Individual agencies' roles and responsibilities agreed upon and contained in existing laws or the state emergency plan are not superseded by this article.
- (c) By December 1, 1994, the Office of Emergency Services, in coordination with the State Fire Marshal's Office, the Department of the California Highway Patrol, the Commission on Peace Officer Standards and Training, the Emergency Medical Services Authority, and all other interested state agencies with designated response roles in the state emergency plan, shall jointly develop an approved course of instruction for use in training all emergency response personnel, consisting of the concepts and procedures associated with the standardized emergency management system described in subdivision (a).
- (d) By December 1, 1996, all state agencies shall use the standardized emergency management system as adopted pursuant to subdivision (a), to coordinate multiple jurisdiction or multiple agency emergency and disaster operations.
- (e)(1) By December 1, 1996, each local agency, in order to be eligible for any funding of response-related costs under disaster assistance programs, shall use the standardized emergency management system as adopted pursuant to subdivision (a) to coordinate multiple jurisdiction or multiple agency operations.
- (2) Notwithstanding paragraph (1), local agencies shall be eligible for repair, renovation, or any other nonpersonnel costs resulting from an emergency.
- (f) The office shall, in cooperation with involved state and local agencies, complete an after-action report within 120 days after each declared disaster. This report shall review public safety response and disaster recovery activities and shall be made available to all interested public safety and emergency management organizations.

(Added by Stats.1992, c. 1069 (S.B.1841), § 1.)

Chapter 7.4. Oil Spill Response and Contingency Planning

Article 1. General Provisions

§ 8670.1. Short title

This chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of the Government Code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be known, and may be cited as, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.2. Legislative findings and declaration

The Legislature finds and declares as follows:

- (a) Each year, billions of gallons of crude oil and petroleum products are transported by vessel or pipeline across and through the marine waters of this state.
- (b) Recent accidents in southern California, Alaska, and other parts of the nation have shown that marine transportation of oil can be a significant threat to the environment of sensitive coastal areas.
- (c) Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum into marine waters.

(d) Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in marine waters.

(e) California's coastal waters, estuaries, bays, and beaches are treasured environmental and economic resources which the state cannot afford to place at undue risk from an oil spill.

(f) Because of the inadequacy of existing cleanup and response measures and technology, the emphasis must be put on prevention, if the risk and consequences of oil spills are to be minimized.

(g) Improvements in the design, construction, and operation of tank ships, terminals, and pipelines; improvements in marine safety; maintenance of emergency response stations and personnel; and stronger inspection and enforcement efforts are necessary to reduce the risks of and from a major oil spill.

(h) A major oil spill in marine waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage.

(i) Immediate action must be taken to improve control and cleanup technology in order to strengthen the capabilities and capacities of cleanup operations.

(j) California government should improve its response and management of oil spills that occur in marine waters.

(k) Those who transport oil through the marine waters of the state must meet minimum safety standards and demonstrate financial responsibility.

(l) The federal government plays an important role in preventing and responding to petroleum spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard, to the greatest degree possible.

(m) California has approximately 1,100 miles of coast, including four marine sanctuaries which occupy 88,767 square miles. The weather, topography, and tidal currents in and around California's coastal ports and waterways make vessel navigation challenging. The state's major ports are among the busiest in the world. Approximately 700 million barrels of oil are consumed annually by California, with over 500 million barrels being transported by vessel. The peculiarities of California's maritime coast require special precautionary measures regarding oil pollution.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 3; Stats.2002, c. 573 (S.B.2090), § 8.)

§ 8670.3. Definitions

Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b)(1) "Best achievable protection" means the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The administrator's determination of which measures provide the best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering all of the following:

(A) The protection provided by the measure.

(B) The technological achievability of the measure.

(C) The cost of the measure.

(2) The administrator shall not use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures provide the best achievable protection. The administrator shall instead, when determining which measures provide best achievable protection, give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(c)(1) "Best achievable technology" means that technology that provides the greatest degree of protection, taking into consideration both of the following:

(A) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.

(B) Processes that are currently in use anywhere in the world.

(2) In determining what is the best achievable technology pursuant to this chapter, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(d) "Dedicated response resources" means equipment and personnel committed solely to oil spill response, containment, and cleanup that are not used for any other activity that would adversely affect the ability of that equipment and personnel to provide oil spill response services in the timeframes for which the equipment and personnel are rated.

(e) "Environmentally sensitive area" means an area defined pursuant to the applicable area contingency plans, as created and revised by the Coast Guard and the administrator.

(f) "Local government" means any chartered or general law city, chartered or general law county, or any city and county.

(g)(1) "Marine facility" means any facility of any kind, other than a tank ship or tank barge, that is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility is either of the following:

(A) Subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(B) Placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank.

(2) For the purposes of this chapter, "marine facility" includes a drill ship, semi submersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

(3) For the purposes of this chapter, "marine facility" does not include a small craft refueling dock.

(h)(1) "Marine terminal" means any marine facility used for transferring oil to or from a tank ship or tank barge.

(2) "Marine terminal" includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (1) of Section 25270.2 of the Health and Safety Code.

(i) "Marine waters" means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

(j) "Mobile transfer unit" means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(k) "Nondedicated response resources" means those response resources identified by an Oil Spill Response Organization for oil spill response activities that are not dedicated response resources.

(l) "Nonpersistent oil" means a petroleum-based oil, such as gasoline, diesel, or jet fuel, that evaporates relatively quickly and is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(m) "Nontank vessel" means a vessel of 300 gross tons or greater that carries oil, but does not carry that oil as cargo.

(n) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(o) "Oil spill cleanup agent" means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

(p) "Oil spill contingency plan" or "contingency plan" means the oil spill contingency plan required pursuant to Article 5 (commencing with Section 8670.28).

(q)(1) "Oil Spill Response Organization" or "OSRO" means an individual, organization, association, cooperative, or other entity that provides, or intends to provide, equipment, personnel, supplies, or other services directly related to oil spill containment, cleanup, or removal activities.

(2) A "rated OSRO" means an OSRO that has received a satisfactory rating from the administrator for a particular rating level established pursuant to Section 8670.30.

(3) "OSRO" does not include an owner or operator with an oil spill contingency plan approved by the administrator or an entity that only provides spill management services, or who provides services or equipment that are only ancillary to containment, cleanup, or removal activities.

(r) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(s)(1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or marine facility immediately beforehand.

(D) An entity of the state or local government that acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) "Owner" or "operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) "Operator" does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(t) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(u) "Pipeline" means any pipeline used at any time to transport oil.

(v) "Reasonable worst case spill" means, for the purposes of preparing contingency plans for a nontank vessel, the total volume of the largest fuel tank on the nontank vessel.

(w) "Responsible party" or "party responsible" means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(x) "Small craft" means any vessel, other than a tank ship or tank barge, that is less than 20 meters in length.

(y) "Small craft refueling dock" means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

- (2) Has total usable tank storage capacity not exceeding 75,000 gallons.
- (z) "Small marine fueling facility" means either of the following:
 - (1) A mobile transfer unit.
 - (2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, that may dispense small amounts of persistent oil, primarily to small craft, and that meets all of the following criteria:
 - (A) Has tank storage capacity * * * greater than 20,000 gallons but not more than 40,000 gallons in any single storage tank or storage tank compartment.
 - (B) Has total usable tank storage capacity not exceeding 75,000 gallons.
 - (C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.
 - (aa) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters that is not authorized by any federal, state, or local government entity.
 - (ab) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.
 - (ac) "California oil spill contingency plan" means the California oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.
 - (ad) "Tank barge" means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.
 - (ae) "Tank ship" means any self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.
 - (af) "Tank vessel" means a tank ship or tank barge.
 - (ag) "Vessel" means any watercraft or ship of any kind, including every structure adapted to be navigated from place to place for the transportation of merchandise or persons.
 - (ah) "Vessel carrying oil as secondary cargo" means any vessel that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

(Added by Stats.1991, c. 10 (S.B.7), § 1.5, eff. Dec. 13, 1990, operative July 1, 1991. Amended by Stats.1991, c. 300 (A.B.1409), § 1, eff. Aug. 1, 1991; Stats.1991, c. 1115 (S.B.977), § 1; Stats.1992, c. 1313 (A.B.3173), § 2, eff. Sept. 30, 1992; Stats.1994, c. 1200 (S.B.469), § 31, eff. Sept 30, 1994; Stats.1994, c. 1298 (A.B.3425), § 1; Stats.1995, c. 91 (S.B.975), § 47; Stats.1995, c. 265 (S.B.1083), § 2; Stats.1995, c. 940 (A.B.1549), § 1.5; Stats.2001, c. 748 (A.B.715), § 4; Stats.2004, c. 796 (S.B.1742), § 5; Stats.2007, c. 373 (A.B.1220), § 3.)

§ 8670.4. Administrator for oil spill response

There shall be an administrator for oil spill response. The administrator shall be a chief deputy director of the Department of Fish and Game. The administrator shall be appointed by the Governor and shall serve at the pleasure of the Governor. The appointment by the Governor shall be subject to the advice and consent of the Senate. The compensation of the administrator shall be fixed by the Governor pursuant to law.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.5. Duties of administrator, full and adequate response to marine oil spills

The Governor shall ensure that the state fully and adequately responds to all oil spills in marine waters. The administrator, acting at the direction of the Governor, shall implement activities relating to oil spill response, including drills and preparedness and oil spill containment and cleanup. The administrator shall also represent the state in any coordinated response efforts with the federal government.

(Added by Stats.1990, c. 1248 (S.B.2040) § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 533 (S.B.1032), § 1; Stats.2004, c. 796 (S.B.1742), §6.)

Article 2. Duties of the Administrator**§ 8670.6. Support personnel; deputy administrators**

(a) The administrator shall ensure that he or she has available for support, either under direct employment, elsewhere in state government, or through contract for private or governmental services, personnel who are fully trained and familiar with oil spill response, containment, and cleanup technologies, procedures, and operations, risk evaluation and management, and emergency systems safety.

(b) The administrator shall appoint a deputy administrator and an assistant deputy administrator to whom the administrator may delegate all or some responsibilities under this article.

(c) The administrator, consistent with applicable civil service laws, shall appoint and discharge any officer, house staff counsel, or employee of the administrator, as determined to be necessary, to carry out this article.

(d) The administrator, including staff and the costs of training and equipping the staff, shall be funded by the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.7. Prevention and response to marine oil spills; implementation of oil spill contingency plan; workshops; guideline publication; memorandum of understanding

(a) The administrator, subject to the Governor, has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in the marine waters of the state, in accordance with any applicable marine facility or vessel contingency plan and the California oil spill contingency plan. The administrator shall cooperate with any federal on-scene coordinator, as specified in the National Contingency Plan.

(b) The administrator shall implement the California oil spill contingency plan, required pursuant to Section 8574.1, to the fullest extent possible.

(c) The administrator shall do both of the following:

(1) Be present at the location of any oil spill of more than 100,000 gallons in marine waters, as soon as possible after notice of the discharge.

(2) Ensure that persons trained in oil spill response and cleanup, whether employed by the responsible party, the state, or another private or public person or entity, are onsite to respond to, contain, and clean up any oil spill in marine waters, as soon as possible after notice of the discharge.

(d) Throughout the response and cleanup process, the administrator shall apprise the members of the State Interagency Oil Spill Committee, the air quality management district or air pollution control district having jurisdiction over the area in which the oil spill occurred, and the local government entities that are affected by the spill.

(e) The administrator, with the assistance of the State Fire Marshal, the State Lands Commission, and the federal on-scene coordinator, shall determine the cause and amount of the discharge.

(f) The administrator shall have the state authority over the use of all response methods, including, but not limited to, in situ burning, dispersants, and any oil spill cleanup agents in connection with an oil discharge. The administrator shall consult with the federal onscene coordinator prior to exercising authority under this subdivision.

(g)(1) The administrator shall conduct workshops, consistent with the intent of this chapter, with the participation of appropriate local, state, and federal agencies, including the State Air Resources Board, air pollution control districts, and air quality management districts, and affected private organizations, on the subject of oil spill response technologies, including in situ burning. The workshops shall review the latest research and findings regarding the efficacy and toxicity of oil spill cleanup agents

and other technologies, their potential public health and safety and environmental impacts, and any other relevant factors concerning their use in oil spill response. In conducting these workshops, the administrator shall solicit the views of all participating parties concerning the use of these technologies, with particular attention to any special considerations that apply to coastal areas and marine waters of the state.

(2) The administrator shall publish guidelines and conduct periodic reviews of the policies, procedures, and parameters for the use of in situ burning, which may be implemented in the event of an oil spill.

(h)(1) The administrator shall ensure that, as part of the response to any significant spill, biologists or other personnel are present and provided any support and funding necessary and appropriate for the assessment of damages to natural resources and for the collection of data and other evidence that may help in determining and recovering damages.

(2)(A) The administrator shall coordinate all actions required by state or local agencies to assess injury to, and provide full mitigation for injury to, or to restore, rehabilitate, or replace, natural resources, including wildlife, fisheries, wildlife or fisheries habitat, and beaches and other coastal areas, that are damaged by an oil spill. For purposes of this subparagraph, "actions required by state or local agencies" include, but are not limited to, actions required by state trustees under Section 1006 of the Oil Pollution Act of 1990 (33 U.S.C. Sec. 2706) and actions required pursuant to Section 8670.61.5.

(B) The responsible party shall be liable for all coordination costs incurred by the administrator.

(3) Nothing in this subdivision shall be construed to give the administrator any authority to administer state or local laws or to limit the authority of another state or local agency to implement and enforce state or local laws under its jurisdiction, nor does this subdivision limit the authority or duties of the administrator under this chapter or limit the authority of an agency to enforce existing permits or permit conditions.

(i)(1) The administrator shall enter into a memorandum of understanding with the executive director of the State Water Resources Control Board, acting for the State Water Resources Control Board and the California regional water quality control boards, and with the approval of the State Water Resources Control Board, to address discharges, other than dispersants, that are incidental to, or directly associated with, the response, containment, and cleanup of an existing or threatened oil spill conducted pursuant to this chapter.

(2) The memorandum of understanding entered into pursuant to paragraph (1) shall address any permits, requirements, or authorizations that are required for the specified discharges. The memorandum of understanding shall be consistent with requirements that protect state water quality and beneficial uses and with any applicable provisions of the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) or the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and shall expedite efficient oil spill response.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1993, c. 736 (A.B.2091), § 1; Stats.1995, c. 265 (S.B.1083), § 3; Stats.1996, c. 776 (A.B.3044), § 1; Stats.1997, c. 17 (S.B.947), § 47; Stats.2004, c. 796 (S.B.1742), § 7.)

§ 8670.8. Training programs

(a) The administrator shall carry out programs to provide training for individuals in response, containment, and cleanup operations and equipment, equipment deployment, and the planning and management of these programs. These programs may include training for members of the California Conservation Corps, other response personnel employed by the state, personnel employed by other public entities, personnel from marine facilities, commercial fishermen and other mariners, and interested members of the public. Training may be offered for volunteers.

(b) The administrator may offer training to anyone who is required to take part in response and cleanup efforts under the California oil spill contingency plan or under local governmental contingency plans prepared and approved under this chapter.

(c) Funding for activities undertaken pursuant to subdivisions (a) and (b) shall be from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38.

(d) All training provided by the administrator shall follow the requirements of applicable federal and state occupational safety and health standards adopted by the Occupational Safety and Health Administration of the Department of Labor and the California Occupational, Safety, and Health Standards Board.

(Added Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 8.)

§ 8670.8.5. Volunteer workers

The administrator may use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in marine waters. The volunteers shall be deemed employees of the state for the purpose of workers' compensation under Article 2 (commencing with Section 3350) of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any payments for workers' compensation pursuant to this section shall be made from the Oil Spill Response Trust Fund created pursuant to Section 8670.46.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 9.)

§ 8670.9. Interstate compact regarding marine oil transportation; discussion with coastal states

(a) The administrator shall enter into discussions on behalf of the state with the States of Alaska, Hawaii, Oregon, and Washington, for the purpose of developing interstate agreements regarding oil spill prevention and response. The agreements shall address, including, but not limited to, all of the following:

- (1) Coordination of vessel safety and traffic.
- (2) Spill prevention equipment and response required on tank ships and tank barges and at terminals.
- (3) The availability of oil spill response and cleanup equipment and personnel.
- (4) Other matters that may relate to the transport of oil and oil spill prevention, response, and cleanup.

(b) The administrator shall coordinate the development of these agreements with the Coast Guard, the Province of British Columbia in Canada, and the Republic of Mexico.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 5; Stats.2004, c. 796 (S.B.1742), § 10.)

§ 8670.10. Emergency drills; coordination among agencies

(a) In coordination with all appropriate federal, state, and local government entities, the administrator shall periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures implemented under this chapter. If practical, the administrator shall coordinate drills with drills carried out by the State Lands Commission and the California Coastal Commission to test prevention operations, equipment, and procedures. In carrying out announced drills, the administrator shall coordinate with the private entities involved in the drill. Each state and local entity, each rated OSRO, and each operator shall cooperate with the administrator in carrying out these drills.

(b) The administrator shall establish performance standards that each operator and rated OSRO shall meet during the drills carried out pursuant to subdivision (a). The standards shall include, but are not limited to, a standard for the time allowable for adequate response, and shall also specify conditions for canceling a drill because of hazardous or other operational circumstances that may exist.

The standards shall specify the protections that the administrator determines are necessary for any environmentally sensitive area, as defined by the administrator.

(c) The costs incurred by an operator to comply with this section and regulations adopted pursuant to this section are the responsibility of the operator. All costs incurred by a local, state, or federal agency in conjunction with participation in a drill pursuant to this chapter shall be borne by each respective agency.

(d) After every drill attended by the administrator or his or her representative, that person shall issue a report that evaluates the performance of the participants.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 6; Stats.2004, c. 796 (S.B.1742), § 11.)

§ 8670.12. Improvement of responses to emergencies; studies and evaluations

(a) The administrator shall conduct studies and evaluations necessary for improving oil spill response, containment, and cleanup and oil spill wildlife rehabilitation in marine waters and marine oil transportation systems. The administrator may expend moneys from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38, enter into consultation agreements, and acquire necessary equipment and services for the purpose of carrying out these studies and evaluations.

(b) The administrator shall study the use and effects of dispersants, incineration, bioremediation, and any other methods used to respond to a spill. The study shall periodically be updated to ensure the best achievable protection from the use of those methods. Based upon substantial evidence in the record, the administrator may determine in individual cases that best achievable protection is provided by establishing requirements which provide the greatest degree of protection achievable without imposing costs which significantly outweigh the incremental protection that would otherwise be provided. The studies shall do all of the following:

(1) Evaluate the effectiveness of dispersants and other chemical agents in oil spill response under varying environmental conditions.

(2) Evaluate potential adverse impacts on the environment and public health including, but not limited to, adverse toxic impacts on water quality, fisheries, and wildlife with consideration to bioaccumulation and synergistic impacts, and the potential for human exposure, including skin contact and consumption of contaminated seafood.

(3) Recommend appropriate uses and limitations on the use of dispersants and other chemical agents to ensure they are used only in situations where the administrator determines they are effective and safe.

(c) The administrator shall evaluate the feasibility of using commercial fishermen and other mariners for oil spill containment and cleanup. The study shall examine the following:

(1) Equipment and technology needs.

(2) Coordination with private response personnel.

(3) Liability and insurance.

(4) Compensation.

(d) The studies shall be performed in conjunction with any studies performed by federal, state, and international entities. The administrator may enter into contracts for the studies.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.13. New technologies; feasibility report

The administrator shall periodically evaluate the feasibility of requiring new technologies to aid prevention, response, containment, cleanup and wildlife rehabilitation.

(Added by Stats.1990, c. 1248 (S.B.2040) § 17 eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 12.)

§ 8670.13.1. Oil spill cleanup agents; regulations for expedited licensing, testing, and use; exception; application; fee

(a) The administrator shall license all oil spill cleanup agents, and shall adopt regulations governing the expedited testing, licensing, and use of oil spill cleanup agents. The administrator shall utilize toxicity and efficacy tests and other information from government and private agencies developed for each specific category of chemical countermeasure in determining the acceptability of an oil spill cleanup agent for license and use.

(b) Sorbents and other cleanup devices that do not employ the use of active chemical cleanup agents, or otherwise determined by the administrator not to cause aquatic toxicity for purposes of oil spill response, are not subject to subdivision (a).

(c) The administrator may charge applicants a fee for the costs of processing an application for a license for an oil spill cleanup agent, not to exceed one thousand dollars (\$1,000). The administrator may require renewal of a license every five years, and may charge a fee for the cost of processing the renewal of the license for an oil spill cleanup agent, not to exceed one hundred dollars (\$100). Only one license per cleanup agent shall be required statewide.

(Added by Stats.1995, c. 265 (S.B.1083), § 4. Amended by Stats.1996, c. 390 (S.B.794), § 1, eff. Aug. 19, 1996, operative Aug. 19, 1996.)

§ 8670.13.2. Licensing regulations; filing; publication

The administrator shall prepare and periodically revise regulations regarding licensing of oil spill cleanup agents. The authority of the administrator shall be substituted for the authority of the State Water Resources Control Board and cross references shall be corrected. The administrator shall submit these regulations to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations. These regulations are exempt from the Administrative Procedure Act. The regulations shall become effective upon filing.

(Added by Stats.1996, c. 390 (S.B.794), § 2, eff. Aug. 19, 1996, operative Aug. 19, 1996. Amended by Stats.1997, c. 17 (S.B.947), § 48; Stats.2004, c. 796 (S.B.1742), § 13.)

§ 8670.14. Coordination with federal programs

The administrator shall coordinate the oil spill prevention and response programs and marine facility, tank vessel, and nontank vessel safety standards of the state with federal programs to the maximum extent possible.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 7; Stats.2004, c. 796 (S.B.1742), § 14.)

§ 8670.15. Annual Report

Repealed by Stats.1995, c. 337 (A.B.1742), § 1.

Prior to Repeal: (Added by Stats.1990, c. 1248 (S.B.2040), §17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1814 (S.B.2025), § 2)

Article 3. Marine Safety**§ 8670.16. Promotion of federal statutes or regulations**

The administrator shall take any action necessary and appropriate to promote the adoption of statutes or regulations by the federal government that establish all of the following requirements:

(a) Each tank ship using ports in the state shall have alarms on the bridge that give warning any time an attempt is made to control the tank ship manually while the autopilot is engaged, whether the attempt is successful or not, or any time the autopilot fails.

(b) Each tank ship using ports in the state shall have in good working order, all of the following:

(1) Two "VHF" bridge-to-bridge radiotelephones.

(2) One single-side band radiotelephone.

(3) One satellite communication device.

(4) Two collision avoidance radar devices, at least one of which has automatic collision avoidance (ARPA) capability.

(c) Each tank ship and tank barge shall use only shipping lanes designed to significantly reduce the likelihood of oil spills reaching sensitive environmental areas, including, but not limited to, the Channel Islands, Big Sur, the Farallon Islands, and the North Coast.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990; Amended by Stats.2001, c. 748 (A.B.715), § 8.)

§ 8670.17. Marine terminals; adoption of regulations; scope of regulations

(a) The administrator shall adopt regulations regarding the equipment, personnel, and operation of vessels to and from marine terminals that are used to transfer oil.

(b) The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(c) The regulations adopted pursuant to this section shall include, but not be limited to, both of the following:

(1) A requirement that the vessel has functional equipment that is compatible with any vessel traffic advisory control system that may be established along the California coast.

(2) A requirement that the vessel, while in marine waters, has at all times at least one person on the bridge who is able to communicate fluently and effectively both in English and in the language of the master of the vessel.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 1298 (A.B.3425), § 2; Stats.1995, c. 337 (A.B.1742), § 2; Stats.2001, c. 748 (A.B.715), § 9.)

§ 8670.17.1. Provision of services to vessels, ports and port users necessitated by this article; reimbursements

The administrator may, for purposes of efficiency, safety, or implementation consistency, provide for services to vessels, ports, and port users which are necessary to achieve requirements mandated pursuant to this article. The administrator may establish or authorize reimbursement for those services which do not exceed the reasonable costs incurred in implementing and administering the service.

(Added by Stats.1993, c. 1190 (S.B.171), § 1, eff. Oct. 11, 1993.)

§ 8670.17.2. Tugboat escorts for tankers and barges; adoption of regulations; public hearings

(a) The administrator shall adopt regulations governing tugboat escorts for tank ships and tank barges entering, leaving, or navigating in the harbors of the state. The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(b) The regulations adopted pursuant to subdivision (a) shall include, but not be limited to, a determination of the circumstances under which tank ships and tank barges are required to be accompanied by a tugboat or tugboats of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbors of the state. In making that determination, the administrator shall be guided by the recommendations of the harbor safety committees established pursuant to Section 8670.23.

(c) The administrator may adopt regulations that differ from the recommendations of the harbor safety committees only after a public hearing. If the administrator proposes to adopt regulations that require the use of tugboat escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which is recommended by the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in a public hearing, adopt findings, based on substantial evidence, that the proposed regulations provide adequate protection and are consistent with the purposes of this chapter.

(d) A public hearing held in accordance with Section 11346.8 shall satisfy the public hearing requirement of subdivision (c).

(e) The Legislature hereby finds and declares that the appropriate use of tugboat escorts can improve vessel safety, particularly in the harbors of San Francisco, San Pablo, and Suisun Bays, and that the regulations concerning tugboat escorts in those harbors shall be adopted as quickly as practicable and may be adopted before the adoption of all other regulations required by this section.

(Added by Stats.1995, c. 940 (A.B.1549), § 2. Amended by Stats.2001, c. 748 (A.B.715), §10.)

§ 8670.18. Inspection of vessels; evaluation of inspection program

(a) The administrator may inspect or cause to be inspected on a regular basis all vessels.

(b) The administrator shall evaluate and periodically review the adequacy of the vessel inspection programs conducted by the Coast Guard and any other federal, state, or local agency. The evaluation shall consider all of the following:

(1) The frequency and scope of inspections.

(2) The continuing commitment of the Coast Guard to conduct frequent vessel inspections.

(3) Any new or pending federal legislation that is likely to change the Coast Guard's inspection programs.

(4) Whether it is desirable for the state to contract with the Coast Guard for more frequent or expanded vessel inspections.

(5) Whether it is desirable and practical for the state to develop and implement a state vessel inspection program.

(c) If the administrator determines in the report that the Coast Guard inspection program is inadequate, the administrator shall attempt to enter into an agreement with the Coast Guard to remedy the deficiencies.

(d) If, within a reasonable time, the administrator cannot remedy deficiencies in the Coast Guard inspection programs, the administrator shall report to the Legislature concerning the steps the administrator is taking to ensure that an adequate vessel inspection program is in place. The administrator shall adopt regulations for any vessel inspection program established pursuant to this section. Vessel inspections authorized pursuant to this section shall be conducted only for the purposes of determining compliance with relevant federal law and the Lempert-Keene-Seastrand Oil Spill

Prevention and Response Act, as defined in Section 8670.1. The administrator shall consult with the Coast Guard regarding state-mandated requirements for vessel inspections.

(e) Any state vessel inspection program established pursuant to this section shall not duplicate the activities of the Coast Guard or other authorized federal agencies. The administrator shall maintain a record of these activities for each vessel inspected. Any violation of Coast Guard regulations shall immediately be reported to the Coast Guard.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1312 (A.B.2912), § 2, eff. Sept. 30, 1992; Stats.1992, c. 1314 (S.B.2025), § 3; Stats.2004, c. 796 (S.B.1742), § 15.)

§ 8670.19. Oil spill contingency plan; review by administrator; amendment recommendations on remand; content

(a) The administrator shall periodically conduct a comprehensive review of all oil spill contingency plans. The administrator shall do both of the following:

- (1) Segment the coast into appropriate areas as necessary.
- (2) Evaluate the oil spill contingency plans for each area to determine if deficiencies exist in equipment, personnel, training, and any other area determined to be necessary, including those response resources properly authorized for cascading into the area, to ensure the best achievable protection of the coastline, set forth in the California oil spill contingency plan, including the marine oil spill contingency planning section.

(b) If the administrator finds that deficiencies exist, the administrator shall, by the process set forth in Section 8670.31, remand any oil spill contingency plans to the originating party with recommendations for amendments necessary to ensure that the coastline is protected.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 533 (S.B.1032), § 2; Stats.2004, c. 796 (S.B.1742), § 16.)

§ 8670.20. Vessel within specified distance of state shore; notice; events disabling vessel

(a) For the purposes of this section, "vessel" means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(b) Any party responsible for a vessel shall notify the Coast Guard within one hour of a disability if the disabled vessel is within 12 miles of the shore of this state. The administrator and the Office of Emergency Services shall request the Coast Guard to notify the Office of Emergency Services as soon as possible after the Coast Guard receives notice of a disabled vessel within 12 miles of the shore of this state. The administrator shall attempt to negotiate an agreement with the Coast Guard governing procedures for Coast Guard notification to the state regarding disabled vessels.

(c) Whenever the Office of Emergency Services receives notice of a disabled vessel, the office shall immediately notify the administrator. If the administrator receives notice from any other source regarding the presence of a disabled vessel within 12 miles of the shore of this state, the administrator shall immediately notify the Office of Emergency Services.

(d) For the purposes of this section, a vessel shall be considered disabled if any of the following occurs:

(1) Any accidental or intentional grounding that creates a hazard to the environment or the safety of the vessel.

(2) Loss of main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel. For the purposes of this paragraph, "loss" means that any system, component, part, subsystem, or control system does not perform the specified or required function.

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including, but not limited to, fire, flooding, or collision with another vessel.

(4) Any occurrence not meeting the above criteria, but that creates the serious possibility of an oil spill or an occurrence that may result in an oil spill.

(e) For the purposes of this section, a tank barge shall be considered disabled if any of the following occur:

(1) The towing mechanism becomes disabled.

(2) The tugboat towing the tank barge becomes disabled through occurrences specified in subdivision (d).

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1995, c. 337 (A.B.1742), § 3; Stats.2001, c. 748 (A.B.715), § 11.)

§ 8670.21. Vessel traffic service and monitoring systems; funding; restrictions on vessels with noncomplying equipment; marine exchange of Los Angeles and Long Beach Harbors

(a) As used in this section, the following terms have the following meanings:

(1) "Vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(2) "VTS system" means a vessel traffic service system.

(b) The administrator shall negotiate an agreement with the Coast Guard, appropriate port agencies, or appropriate organizations, for a VTS system to protect the harbors of this state. The administrator may include in the agreement provisions for vessel traffic monitoring and communications systems for areas of the coast outside of harbors, or negotiate a separate agreement for that purpose. The purpose of a VTS system and a vessel traffic monitoring and communications system shall be to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic, to prevent collisions and groundings.

(c) A plan developed by the administrator, in consultation with the Coast Guard, shall provide for implementing and maintaining VTS systems pursuant to subdivision (b) for the Ports of Los Angeles and Long Beach, the Harbors of San Francisco, the Santa Barbara Channel, and any other area where establishing a VTS system or a vessel monitoring and communications system is recommended by the Coast Guard. The plan shall provide for the areas described in this subdivision, and for any other system and areas that are recommended by the Coast Guard, or recommended by the administrator and approved by the Coast Guard. Only systems that will be operated by the Coast Guard, or that will have direct communication with a Coast Guard officer who has Captain of the Port enforcement authority, shall be included in the plan. The plan shall be amended periodically to reflect any changes in Coast Guard recommendations or operations, and any changes in the agreements entered into pursuant to subdivision (b). The plan shall, to the extent allowable given federal requirements, provide for the best achievable protection.

(d)(1) The administrator shall attempt to provide funding for VTS systems and vessel monitoring and communications systems through voluntary funding, or services in kind, provided by the maritime industry. If agreement on voluntary funding or services in kind cannot be reached, the administrator may establish a fee system that reflects the commercial maritime activity of each of the respective harbors or areas for which a VTS system or a vessel monitoring and communications system is established. Using that fee system, the administrator shall fund VTS systems and vessel monitoring and communications systems.

(2) The money collected pursuant to this subdivision shall be deposited in the Vessel Safety Account, which is hereby created in the Oil Spill Prevention and Administration Fund. The money in the Vessel Safety Account is hereby continuously appropriated for the sole purpose of funding VTS systems and vessel monitoring and communications systems. Other than the fees imposed pursuant to this subdivision that are deposited in the Vessel Safety Account, no funds from the Oil Spill Prevention and

Administration Fund may be used to pay for VTS systems or vessel traffic monitoring and communications systems.

(3) The administrator shall adopt regulations to implement this subdivision. The administrator may adopt regulations prohibiting tank barges and tank ships from accepting or unloading oil at marine terminals if a tank barge or tank ship is not in compliance with required VTS system or vessel traffic monitoring and communications system equipment.

(e) If a VTS system covers waters outside the jurisdiction of a local port authority, the administrator may grant the money that is determined to be necessary for the purchase and installation of equipment required for the establishment or expansion of the VTS system. Those grants may be made from the Oil Spill Response Trust Fund in accordance with Section 8670.49, as individual and nonrecurring appropriations through the budget process, but shall not exceed the amount of interest earned from money in that fund.

(f)(1) The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., a corporation organized under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), may operate a VTS system in the VTS area described in Section 445 of the Harbors and Navigation Code if the VTS system is approved by the Coast Guard and certified by the administrator as meeting the requirements of this chapter. The marine exchange shall cooperate fully with the administrator in the development, implementation, and operation of that VTS system. Upon certification by the administrator that the Coast Guard has commenced operation of a fully federally funded VTS system for the VTS area, the authorization for the marine exchange to operate a VTS system shall terminate.

(2) The Port of Los Angeles and the Port of Long Beach may impose fees upon all covered vessels, as defined in Section 445.5 of the Harbors and Navigation Code, for the funding of the VTS system operated by the marine exchange.

(3) No vessel that is required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall assert any claim against the marine exchange or any officer, director, employee, or representative of the marine exchange for any damage, loss, or expense, including any rights of indemnity or other rights of any kind, sustained by that vessel or its owners, agents, charterers, operators, crew, or third parties arising out of, or connected with, directly or indirectly, the marine exchange's operation of the vessel traffic service, even though resulting in whole or in part from the negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(4) Each vessel required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall defend, indemnify, and hold harmless the marine exchange and its officers, directors, employees, and representatives from any and all claims, suits, or actions of any nature by whomsoever asserted, even though resulting or alleged to have resulted from negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(5) Nothing in this subdivision affects any liability or rights that may arise by reason of the gross negligence or intentional or willful misconduct of the marine exchange or of an officer, director, employee, or representative of the marine exchange in the operation of the VTS system, including any liability pursuant to subdivision (c) of Section 449.5 of the Harbors and Navigation Code.

(6) The marine exchange and its officers and directors are subject to Section 5047.5 of the Corporations Code to the extent that the marine exchange meets the criteria specified in that section.

(7) Nothing in this section shall be deemed to include the marine exchange or its officers, directors, employees, or representatives within the definition of "responsible party" pursuant to Section 8670.3 for purposes of this chapter.

(8) Upon request by the administrator, the marine exchange shall submit a report containing a complete description of the VTS system operated by the marine exchange. Upon receiving the report, the administrator shall determine, after a public hearing, whether the elements and operation of the VTS system are consistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach

developed pursuant to Section 8670.23.1 and the standards for the statewide vessel traffic service systems plan. If the administrator determines that the VTS system is inconsistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 or with the statewide vessel traffic service systems plan, the administrator shall issue an order to the marine exchange specifying modifications to the VTS system to eliminate the inconsistencies. If the marine exchange has not complied with that order within six months of issuance, the administrator may, in addition to, or in lieu of, any other enforcement action authorized by this chapter or Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code, and after a public hearing, administratively revoke the authorization for the marine exchange to operate a VTS system. If authorization for the marine exchange to operate a VTS system is revoked, the administrator shall take any action necessary to expeditiously establish a VTS system for the VTS area described in Section 445 of the Harbors and Navigation Code. The action may include the assessment of fees on vessels, port users, and ports, and needed expenditures, as provided in subdivision (d).

(g) It is the intent of the Legislature that VTS systems and vessel traffic monitoring and communications systems be completed and operated by the Coast Guard, except that, with respect to the VTS area described in Section 445 of the Harbors and Navigation Code, a VTS system may be operated by the Marine Exchange of Los Angeles-Long Beach, Inc., pursuant to subdivision (f).

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1991, c. 945 (S.B.200), § 2; Stats.1995, c. 337 (A.B.1742), § 4; Stats.1996, c. 362 (A.B.748), § 1; Stats.1997, c. 17 (S.B.947), § 49; Stats.2001, c. 748 (A.B.715), § 12; Stats.2004, c. 796 (S.B.1742), § 17.)

§ 8670.22. Federal double hull requirements; docking of noncomplying vessels

Any vessel that is not in compliance with the time schedules and requirements relating to double hulls set forth in the federal Oil Pollution Prevention, Response, Liability and Compensation Act of 1990 shall be prohibited from docking, loading, or unloading at any marine terminal in the state.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.23. Harbor safety committees; members; qualifications; chairperson; expenses

(a) The administrator shall establish Harbor Safety Committees for harbors and adjacent regions of San Diego; Los Angeles/Long Beach; Port Hueneme; San Francisco; and Humboldt Bay.

(b) The administrator shall determine the geographic area for each harbor safety committee.

(c) The administrator shall appoint to each harbor safety committee, for a term of three years, all of the following members, and their alternates:

(1) A designee of a port authority within the harbor.

(2) A representative of tank ship operators.

(3) A representative of the pilot organizations within the harbor.

(4) A representative of dry cargo vessel operators.

(5) A representative of commercial fishing operators.

(6) A representative of a recognized nonprofit environmental organization that has as a purpose the protection of marine resources.

(7) A designee of the California Coastal Commission, except that for the Harbor Safety Committee for San Francisco Bay, the administrator shall appoint a designee of the San Francisco Bay Conservation and Development Commission.

(8) A representative from a recognized labor organization involved with operations of vessels.

(9) A designee of the Captain of the Port from the United States Coast Guard, the United States Army Corps of Engineers, the National Oceanographic and Atmospheric Administration, and the United States Navy to the extent that each consents to participate on the committee.

(10) A representative of tug or tank barge operators, who is not also engaged in the business of operating either tank ships or dry cargo vessels.

(11) A representative of pleasure boat operators.

(12) A harbor safety committee may petition the administrator with a request for a new or additional membership position needed to conduct the harbor safety committee business and that reflects the makeup of the local maritime community. The approval of this petition shall be at the sole discretion of the administrator.

(13) A harbor safety committee may petition the administrator for the elimination of a new or additional membership position requested and approved pursuant to paragraph (12). The approval of this petition shall be at the sole discretion of the administrator.

(d) The members appointed from the categories listed in paragraphs (2), (3), (4), and (10) of subdivision (c) shall have navigational expertise. An individual is considered to have navigational expertise if the individual meets any of the following conditions:

(1) Has held or is presently holding a Coast Guard Merchant Marine Deck Officer's license.

(2) Has held or is presently holding a position on a commercial vessel that includes navigational responsibilities.

(3) Has held or is presently holding a shoreside position with direct operational control of vessels.

(4) Has held or is currently holding a position having responsibilities for permitting or approving the docking of vessels in and around harbor facilities relating to the safe navigation of vessels.

(e) The administrator shall appoint a chairperson and vice chairperson for each harbor safety committee from the membership specified in subdivision (c). The administrator may withdraw such appointments at his or her sole discretion.

(f) Upon request of the harbor safety committee, the administrator may remove a member.

(g) Each member of a harbor safety committee may be reimbursed for actual and necessary expenses incurred in the performance of committee duties.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 1298 (A.B.3425), § 3; Stats.1995, c. 337 (A.B.1742), § 5; Stats.2001, c. 748 (A.B.715), § 13; Stats.2004, c. 796 (S.B.1742), § 18.)

§ 8670.23.1. Harbor safety committee; harbor safety plan; regulations; implementation; revision

(a) Each harbor safety committee established pursuant to Section 8670.23 shall be responsible for planning for the safe navigation and operation of tank ships, tank barges, and other vessels within each harbor. Each committee shall prepare a harbor safety plan, encompassing all vessel traffic within the harbor.

(b) The administrator shall adopt regulations for harbor safety committee membership positions required in addition to those specified in Section 8670.23 and for harbor safety plans in consultation with the committees of those harbors listed in Section 8670.23, and other affected parties. The regulations shall require that the plan contain a discussion of the competitive aspects of the recommendations of the harbor safety committee.

(c) The regulations shall ensure that each harbor safety plan includes all of the following elements:

(1) A recommendation determining when tank vessels are required to be accompanied by a tugboat or tugboats, of sufficient size, horsepower, and pull capability while entering, leaving, or

navigating in the harbor. The Harbor Safety Committee for San Francisco shall give the highest priority to the continual review and evaluation of tugboat escort regulations. The administrator shall be guided by the recommendations of the harbor safety committee when adopting regulations pursuant to Section 8670.17.2.

(2) A review and evaluation of the adequacy of, and any changes needed in, all of the following:

- (A) Anchorage designations and sounding checks.
- (B) Communications systems.
- (C) Small vessel congestion in shipping channels.
- (D) Placement and effectiveness of navigational aids, channel design plans, and the traffic and routings from port construction and dredging projects.

(3) Procedures for routing vessels during emergencies that impact navigation.

(4) Bridge management requirements.

(5) Suggested mechanisms to ensure that the provisions of the plan are fully and regularly enforced.

(d) Each harbor safety plan shall be submitted to the administrator. The administrator shall review and provide comment on the plan for consistency with the regulations.

(e) The administrator shall, in consultation with the harbor safety committees listed in Section 8670.23, implement the plans. The administrator shall adopt regulations necessary to implement the plans. When federal authority or action is required to implement a plan, the administrator shall petition the appropriate federal agency or the United States Congress, as may be necessary.

(f) On or before July 1 of each year, each harbor safety committee shall revise its respective harbor safety plan and report its findings and recommendations to the administrator.

(g) The administrator may direct a harbor safety committee to address any issue affecting maritime safety or security, as appropriate, and to report findings and recommendations on those issues. The administrator shall forward those findings and recommendations to the appropriate authority.

(Added by Stats.1995, c. 337 (A.B.1742), § 6. Amended by Stats.2001, c. 748 (A.B.715), § 14; Stats.2004, c. 796 (S.B.1742), § 19.)

§ 8670.23.2. Harbor Safety Committee members; immunity from liability

(a) The Legislature hereby finds and declares that because the administrator must rely on the expertise provided by volunteer members of the harbor safety committees and be guided by their recommendations in making decisions that relate to the public safety, members of the harbor safety committees should be entitled to the same immunity from liability provided other public employees.

(b) Members of the harbor safety committees appointed pursuant to Section 8670.23, while performing duties required by this article or by the administrator, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the harbor safety committee.

(Added by Stats.1995, c. 337 (A.B.1742), § 7.)

§ 8670.24. Pilotage areas; evaluations

(a) The administrator shall evaluate all pilotage areas in the state. This evaluation shall include all of the following:

(1) The effectiveness of the state licensing program.

(2) The policies and procedures for investigating pilot incidents by either the Coast Guard or the State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun.

(3) The feasibility and desirability of applying a surcharge in addition to other fees for pilotage for the purposes of providing expanded pilot training.

(b) The administrator will contact the various pilotage groups, the Coast Guard, and the maritime industry as part of his or her evaluation process.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 20.)

Article 4. Oil Spill Response

§ 8670.25. Removal of oil discharged in or on marine waters

(a) Any person who, without regard to intent or negligence, causes or permits any oil to be discharged in or on the marine waters of the state shall immediately contain, cleanup, and remove the oil in the most effective manner which minimizes environmental damage and in accordance with the applicable contingency plans, unless ordered otherwise by the Coast Guard or the administrator.

(b) If there is a spill, an owner or operator shall comply with the applicable oil spill contingency plan approved by the administrator.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 15.)

§ 8670.25.5. Report of discharged oil; notice to public agencies; exemptions

(a) Without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in marine waters shall report the discharge immediately to the Office of Emergency Services pursuant to Section 25507 of the Health and Safety Code.

(b) Immediately upon receiving notification pursuant to subdivision (a), the Office of Emergency Services shall notify the administrator, the State Lands Commission, the California Coastal Commission, the California regional water quality control board having jurisdiction over the location of the discharged oil, and take the actions required by subdivision (d) of Section 8589.7. If the spill has occurred within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the Office of Emergency Services shall notify that commission. Each public agency specified in this subdivision shall adopt an internal protocol over communications regarding the discharge of oil and file the internal protocol with the Office of Emergency Services.

(c) The 24-hour emergency telephone number of the Office of Emergency Services shall be posted at every terminal, at the area of control of every marine facility, and on the bridge of every tank ship in marine waters.

(d) This section does not apply to discharges, or potential discharges, of less than one barrel (42 gallons) of oil unless a more restrictive reporting standard is adopted in the California oil spill contingency plan prepared pursuant to Section 8574.1.

(e) Except as otherwise provided in this section and Section 8589.7, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, Sept. 24, 1990. Amended by Stats.1994, c. 1214 (A.B.3404), § 3; Stats.2001, c. 748 (A.B.715), § 16; Stats.2004, c. 563 (A.B.1408), § 1; Stats.2004, c. 796 (S.B.1742), § 21.5.)

§ 8670.26. Notification by responding agency

Any local or state agency responding to a spill of oil shall notify the Office of Emergency Services, if notification as required under Section 8670.25.5, Section 13272 of the Water Code, or any other notification procedure adopted in the California oil spill contingency plan has not occurred.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2004, c. 796 (S.B.1742), § 22.)

§ 8670.27. Response and cleanup of spill; refusal to comply with cleanup order and plan

(a)(1) All potentially responsible parties for discharged oil and all of their agents and employees and all state and local agencies shall carry out response and cleanup operations in accordance with the applicable contingency plan, unless directed otherwise by the administrator or the Coast Guard.

(2) Except as provided in subdivision (b), the responsible party, potentially responsible parties, their agents and employees, the operators of all vessels docked at a marine facility that is the source of a discharge, and all state and local agencies shall carry out spill response consistent with the California oil spill contingency plan or other applicable federal, state, or local spill response plans, and owners and operators shall carry out spill response consistent with their applicable response contingency plans, unless directed otherwise by the administrator or the Coast Guard.

(b) If a responsible party or potentially responsible party reasonably, and in good faith, believes that the directions or orders given by the administrator pursuant to subdivision (a) will substantially endanger the public safety or the environment, the party may refuse to act in compliance with the orders or directions of the administrator. The responsible party or potentially responsible party shall state, at the time of the refusal, the reasons why the party refuses to follow the orders or directions of the administrator. The responsible party or potentially responsible party shall give the administrator written notice of the reasons for the refusal within 48 hours of refusing to follow the orders or directions of the administrator. In any civil or criminal proceeding commenced pursuant to this section, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the administrator was justified under the circumstances.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1312 (A.B.2912), § 3, eff. Sept. 30, 1992; Stats.2001, c. 748 (A.B.715), § 17; Stats.2004, c. 796 (S.B.1742), § 23.)

Article 5. Contingency Planning**§ 8670.28. Oil spill contingency plans; regulations and guidelines governing adequacy; minimum requirements**

(a) The administrator, taking into consideration the marine facility or vessel contingency plan requirements of the national and California contingency plans, the State Lands Commission, the State Fire Marshal, and the California Coastal Commission shall adopt and implement regulations governing the adequacy of oil spill contingency plans to be prepared and implemented under this article. All regulations shall be developed in consultation with the State Interagency Oil Spill Committee, and the Oil Spill Technical Advisory Committee, and shall be consistent with the California oil spill contingency plan and not in conflict with the National Contingency Plan. The regulations shall provide for the best achievable protection of coastal and marine resources. The regulations shall permit the development, application, and use of an oil spill contingency plan for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations shall, at a minimum, ensure all of the following:

(1) All areas of the marine waters of the state are at all times protected by prevention, response, containment, and cleanup equipment and operations. For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(2) Standards set for response, containment, and cleanup equipment and operations are maintained and regularly improved to protect the resources of the state.

(3) All appropriate personnel employed by operators required to have a contingency plan receive training in oil spill response and cleanup equipment usage and operations.

(4) Each oil spill contingency plan provides for appropriate financial or contractual arrangements for all necessary equipment and services, for the response, containment, and cleanup of a reasonable worst case oil spill scenario for each part of the coast the plan addresses.

(5) Each oil spill contingency plan demonstrates that all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the marine facility or vessel. The protection measures shall include, but not be limited to, response to disabled vessels and an identification of those measures taken to comply with requirements of Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(6) Each oil spill contingency plan identifies the types of equipment that can be used, the location of the equipment, and the time taken to deliver the equipment.

(7) Each marine facility conducts a hazard and operability study to identify the hazards associated with the operation of the facility, including the use of the facility by vessels, due to operating error, equipment failure, and external events. For the hazards identified in the hazard and operability studies, the facility shall conduct an offsite consequence analysis which, for the most likely hazards, assumes pessimistic water and air dispersion and other adverse environmental conditions.

(8) Each oil spill contingency plan contains a list of contacts to call in the event of a drill, threatened discharge of oil, or discharge of oil.

(9) Each oil spill contingency plan identifies the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.

(10) Standards for determining a reasonable worst case oil spill.

(11) Each oil spill contingency plan includes a timetable for implementing the plan.

(12) Each oil spill contingency plan specifies an agent for service of process. The agent shall be located in this state.

(b) The regulations and guidelines adopted pursuant to this section shall also include provisions to provide public review and comment on submitted oil spill contingency plans prior to approval.

(c) The regulations adopted pursuant to this section shall specifically address the types of equipment that will be necessary, the maximum time that will be allowed for deployment, the maximum distance to cooperating response entities, the amounts of dispersant, and the maximum time required for application, should the use of dispersants be approved. Upon a determination by the administrator that booming is appropriate at the site and necessary to provide best achievable protection, the regulations shall require that vessels engaged in lightering operations be boomed prior to the commencement of operations.

(d) The administrator shall adopt regulations and guidelines for oil spill contingency plans with regard to mobile transfer units, small marine fueling facilities, and vessels carrying oil as secondary cargo that acknowledge the reduced risk of damage from oil spills from those units, facilities, and vessels while maintaining the best achievable protection for the public health and safety and the environment.

(e) The regulations adopted pursuant to subdivision (d) shall be exempt from review by the Office of Administrative Law. Subsequent amendments and changes to the regulations shall not be exempt from Office of Administrative Law review.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1992, c. 1313, (A.B.3173), § 3, eff. Sept. 30, 1992; Stats.1995, c. 940 (A.B.1549), § 3; Stats.2001, c. 748 (A.B.715), § 18; Stats.2004, c. 796 (S.B.1742), § 24.)

§ 8670.28.5. Level of readiness

An operator shall maintain a level of readiness that will allow effective implementation of the applicable contingency plans.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.29. Oil spill contingency plan; requirements; availability to state and federal agencies; periodic review; implementation

(a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, every owner or operator of a marine facility, small marine fueling facility or mobile transfer unit, prior to operating in the marine waters of the state or where an oil spill could impact marine waters; and every owner or operator of a tank vessel, nontank vessel or vessel carrying oil as secondary cargo before operating in the marine waters of the state, shall prepare and implement an oil spill contingency plan that has been submitted to, and approved by, the administrator pursuant to Section 8670.31. Each oil spill contingency plan shall ensure the undertaking of prompt and adequate response and removal action in case of an oil spill, shall be consistent with the California oil spill contingency plan, and shall not conflict with the National Contingency Plan.

(b) Each oil spill contingency plan shall, at a minimum, meet all of the following requirements:

(1) Be a written document, reviewed for feasibility and executability, and signed by the owner or operator, or their designee.

(2) Provide for the use of an incident command system to be used during a spill.

(3) Provide procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened spill, or spill.

(4) Describe the communication plans to be used during a spill.

(5) Describe the strategies for the protection of environmentally sensitive areas.

(6) Identify at least one rated OSRO for each rating level established pursuant to Section 8670.30. Each identified rated OSRO shall be directly responsible by contract, agreement, or other approved means to provide oil spill response activities pursuant to the oil spill contingency plan. A rated OSRO may provide oil spill response activities individually, or in combination with another rated OSRO, for a particular owner or operator.

(7) Identify a qualified individual.

(8) Provide the name, address, telephone, and facsimile numbers for an agent for service of process, located within the state and designated to receive legal documents on behalf of the owner or operator.

(c) An oil spill contingency plan for a vessel shall also include, but is not limited to, all of the following requirements:

(1) Each plan shall be submitted to the administrator at least seven days prior to the vessel entering waters of the state.

(2) Each plan shall provide evidence of compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

- (3) If the oil spill contingency plan is for a tank vessel, the plan shall include both of the following:
- (A) The plan shall specify oil and petroleum cargo capacity.
 - (B) The plan shall specify the types of oil and petroleum cargo carried.
- (4) If the oil spill contingency plan is for a nontank vessel, the plan shall include both of the following:
- (A) The plan shall specify the type and total amount of fuel carried.
 - (B) The plan shall specify the capacity of the largest fuel tank.
 - (d) An oil spill contingency plan for a marine facility shall also include, but is not limited to, all of the following provisions:
- (1) Provisions for site security and control.
 - (2) Provisions for emergency medical treatment and first aid.
 - (3) Provisions for safety training, as required by state and federal safety laws for all personnel likely to be engaged in oil spill response.
 - (4) Provisions detailing site layout and locations of environmentally sensitive areas requiring special protection.
 - (5) Provisions for vessels that are in the operational control of the facility for loading and unloading.
 - (6) * * * Provisions for training and drills on elements of the plan at least annually * * *.
 - (7) Provisions for subjecting all elements of the plan to drills or tests, as specified by the administrator, at least once every three years.
- (e) The oil spill contingency plan shall be available to response personnel and to relevant state and federal agencies for inspection and review.
- (f) The oil spill contingency plan shall be reviewed periodically and updated as necessary. All updates shall be submitted to the administrator pursuant to this article.
- (g) In addition to the regulations adopted pursuant to Section 8670.28, the administrator shall adopt regulations and guidelines to implement this section. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The administrator may establish additional oil spill contingency plan requirements, including, but not limited to, requirements based on the different geographic regions of the state. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

(Added by Stats.2001, c. 748 (A.B.715), § 20. Amended by Stats.2004, c. 796 (S.B.1742), § 25; Stats.2007, c. 373 (A.B.1220), § 4, eff. October 10, 2007.)

§ 8670.30. Oil spill response organization capabilities; rating; elements

- (a) An oil spill response organization may apply to the administrator for a rating of that OSRO's response capabilities. The administrator shall establish rating levels for classifying OSROs pursuant to subdivision (b).
- (b) Upon receiving a completed application for rating, the administrator shall review the application and rate the OSRO based on the OSRO's satisfactory compliance with criteria established by the administrator, which shall include, but is not limited to, all of the following elements:
- (1) The geographic region or regions of the state where the OSRO intends to operate.
 - (2) Timeframes for having response resources on-scene and deployed.
 - (3) The type of equipment that the OSRO will use and the location of the stored equipment.
 - (4) The volume of oil that the OSRO is capable of recovering and containing.
- (c) The administrator shall not issue a rating until the applicant OSRO completes an unannounced drill. The administrator may call a drill for every distinct geographic area in which the OSRO requests a rating. The drill shall test the resources and response capabilities of the OSRO, including, but not limited to, on water containment and recovery, environmentally sensitive habitat

protection, and storage. If an OSRO fails to successfully complete a drill, the administrator shall not issue the requested rating, but the administrator may rate the OSRO at a rating lesser than the rating sought with the application. If an OSRO is denied a requested rating, the OSRO may reapply for rating.

(d) A rating issued pursuant to this section shall be valid for three years unless modified, suspended, or revoked. The administrator shall review the rating of each rated OSRO at least once every three years. The administrator shall not renew a rating unless the OSRO meets criteria established by the administrator, including, at a minimum, that the rated OSRO periodically tests and drills itself, including testing protection of environmentally sensitive sites, during the three-year period.

(e) The administrator may require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. These demonstrations may be achieved through inspections, announced and unannounced drills, or by any other means.

(f)(1) Except as provided in paragraph (6), each rated OSRO shall satisfactorily complete at least one unannounced drill every three years after receiving its rating.

(2) The administrator may modify, suspend, or revoke an OSRO's rating if a rated OSRO fails to satisfactorily complete a drill.

(3) The administrator may require the satisfactory completion of one unannounced drill of each rated OSRO prior to being granted a modified rating, or for renewal, or prior to reinstatement of a revoked or suspended rating.

(4) A drill for the protection of environmentally sensitive areas shall conform as close as possible to the response that would occur during a spill but sensitive sites shall not be damaged during the drill.

(5) The response resources to be deployed by a rated OSRO within the first six hours of a spill or drill shall be dedicated response resources or be owned and controlled by a rated OSRO that are sufficient to meet the spill response planning requirements of the OSRO's client owner or operator. This requirement does not preclude a rated OSRO from bringing in additional response resources. The administrator may, by regulation, permit a lesser requirement for dedicated or OSRO owned and controlled response resources for shoreline protection.

(6) The administrator may determine that actual spill response performance may be substituted in lieu of a drill.

(7) The administrator shall issue a written report evaluating the performance of the OSRO after every unannounced drill called by the administrator.

(8) The administrator shall determine whether an unannounced drill called upon an OSRO by a federal agency qualifies as an unannounced drill for the purposes of this subdivision.

(g) Each rated OSRO shall provide reasonable notice to the administrator about each future drill, and the administrator, or his or her designee, may attend the drill.

(h) The costs incurred by an OSRO to comply with this section and the regulations adopted pursuant to this section, including drills called by the administrator, shall be the responsibility of the OSRO. All local, state, and federal agency costs incurred in conjunction with participation in a drill shall be borne by each respective agency.

(i)(1) A rating awarded pursuant to this section is personal and applies only to the OSRO that receives that rating and the rating is not transferable, assignable, or assumable. A rating does not constitute a possessory interest in real or personal property.

(2) If there is a change in ownership or control of the OSRO, the rating of that OSRO is null and void and the OSRO shall file a new application for a rating pursuant to this section.

(3) For purposes of this subdivision, a "change in ownership or control" includes, but is not limited to, a change in corporate status, or a transfer of ownership that changes the majority control of voting within the entity.

(j) The administrator may charge a reasonable fee to process an application for, or renewal of, a rating.

- (k) The administrator shall adopt regulations to implement this section as appropriate. At a minimum, the regulations shall appropriately address all of the following:
- (1) Criteria for successful completion of a drill.
 - (2) The amount and type of response resources that are required to be available to respond to a particular volume of spilled oil during specific timeframes within a particular region.
 - (3) Regional requirements.
 - (4) Training.
 - (5) The process for applying for a rating, and for suspension, revocation, appeal, or other modification of a rating.
 - (6) Ownership and employment of response resources.
 - (7) Conditions for canceling a drill due to hazardous or other operational circumstances.
- (l) Any letter of approval issued from the administrator before January 1, 2002, that rates an OSRO shall be deemed to meet the requirements of this section for three years from the date of the letter's issuance or until January 1, 2003, whichever date occurs later.

(Added by Stats.2001, c. 748 (A.B.715), § 22.)

§ 8670.30.5. Review of oil spill contingency plans

- (a) The administrator may review each oil spill contingency plan that has been approved pursuant to Section 8670.29 to determine whether it complies with Sections 8670.28 and 8670.29.
- (b) If the administrator finds the approved oil spill contingency plan is deficient, the plan shall be returned to the operator with written reasons why the approved plan was found inadequate and, if practicable, suggested modifications or alternatives. The operator shall submit a new or modified plan within 90 days that responds to the deficiencies identified by the administrator.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 23.)

§ 8670.31. Oil spill contingency plans; review; resubmissions

- (a) Each oil spill contingency plan required under this article shall be submitted to the administrator before a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo operates in the marine waters of the state, or before a marine facility, small marine fueling facility, or mobile transfer unit, operates in the marine waters of the state or where an oil spill therefrom could impact marine waters.
- (b) The administrator shall review each submitted contingency plan to determine whether it complies with the administrator's rules, policies, and regulations adopted pursuant to Section 8670.28 and 8670.29.
- (c) Each contingency plan submitted shall be approved or disapproved within 180 days after receipt by the administrator. The administrator may approve or disapprove portions of a plan. A plan is not deemed approved until all portions are approved pursuant to this section. The disapproved portion shall be subject to the procedures contained in subdivision (d).
- (d) If the administrator finds the submitted contingency plan is inadequate under the rules, policies, and regulations of the administrator, the plan shall be returned to the submitter with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives, if appropriate. The submitter shall submit a new or modified plan within 90 days after the earlier plan was returned, responding to the findings and incorporating any suggested modifications. The resubmittal shall be treated as a new submittal and processed according to the provisions of this section, except that the resubmitted plan shall be deemed approved unless the administrator acts pursuant to subdivision (c). Failure to gain approval after the second submission may be determined by the administrator to be a violation of this chapter.

(e) The administrator may make inspections and require drills of any oil spill contingency plan that is submitted.

(f) After the plan has been approved, it shall be resubmitted every five years thereafter. The administrator may require earlier or more frequent resubmission, if warranted. Circumstances that would require an earlier resubmission include, but are not limited to, changes in regulations, new oil spill response technologies, deficiencies identified in the evaluation conducted pursuant to Section 8670.19, or a need for a different oil spill response because of increased need to protect endangered species habitat. The administrator may deny approval of the resubmitted plan if it is no longer considered adequate according to the adopted rules, regulations, and policies of the administrator at the time of resubmission.

(g)(1) Each operator of a tank vessel, vessel carrying oil as a secondary cargo, or marine facility who is required to file an oil spill response plan or update pursuant to provisions of federal law regulating marine oil spill response plans shall, for informational purposes only, submit a copy of that plan or update to the administrator at the time that it is approved by the relevant federal agency.

(2) A tank vessel, vessel carrying oil as a secondary cargo, or marine facility operator is not required to submit a copy of the response plan or update specified in paragraph (1) to the administrator if either the vessel or facility is exempt from having to file a response plan with the state, or if the content of the plan submitted by the operator pursuant to Section 8670.29 is substantially the same as the federal response plan or update.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 351 (S.B.2047), § 1; Stats.2001, c. 748 (A.B.715), § 24; Stats.2002, c. 573 (S.B.2090), § 9; Stats.2004, c. 796 (S.B.1742), § 26.)

§ 8670.32. Nontank vessels; oil spill contingency plan

Repealed by Stats.2000, c. 721 (S.B.221), § 2.5, eff. Sept. 27, 2000.

Prior to Repeal: (Added by Stats.1999, c. 687 (S.B.387), § 2, operative Jan. 1, 2001.)

Repealed by Stats.2001, c. 748 (A.B.715), § 25.

Prior to Repeal: (Added by Stats.1998, c. 964 (S.B.1644), § 1. Amended by Stats.1999, c. 687 (S.B.387) § 1; Stats.2000, c. 721 (S.B.221), § 1.)

Repealed by Stats.2001, c. 748 (A.B.715), § 26.

Prior to Repeal: (Added by Stats.2000, c. 721 (S.B.221), § 2, operative Jan. 1, 2003.)

§ 8670.33. Vessels without approved contingency plans; entrance into state marine waters

(a) If the operator of a tank ship or tank barge for which a contingency plan has not been approved desires to have the tank ship or tank barge enter marine waters of the state, the administrator may give approval by telephone or facsimile machine for the entry of the tank ship or tank barge into marine waters under an approved contingency plan applicable to a terminal or tank ship, if all of the following are met:

(1) The terminal or tank ship is the destination of the tank ship or tank barge.

(2) The operator of the terminal or the tank ship provides the administrator advance written assurance that the operator assumes all responsibility for the operations of the tank ship or tank barge while it is in marine waters traveling to or from the terminal. The assurance may be delivered by hand or by mail or may be sent by facsimile machine, followed by delivery of the original.

(3) The approved terminal or tank ship contingency plan includes all conditions the administrator requires for the operations of tank ship or tank barges traveling to and from the terminal.

(4) The tank ship or tank barge and its operations meet all requirements of the contingency plan for the tank ship or terminal that is the destination of the tank ship or tank barge.

(5) The tank ship or tank barge without an approved contingency plan has not entered marine waters more than once in the 12-month period preceding the request made under this section.

(b) At all times that a tank ship or tank barge is in marine waters pursuant to subdivision (a), its operators and all their agents and employees shall operate the vessel in accordance with the applicable operations manual or, if there is an oil spill, in accordance with the directions of the administrator and the applicable contingency plan.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 27; Stats.2002, c. 573 (S.B.2090), § 10.)

§ 8670.34. Emergency entrance into state marine waters; application of article

This article shall not apply to any tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo that enters marine waters of the state because of imminent danger to the lives of crew members or if entering marine waters of the state will substantially aid in preventing an oil spill or other harm to public safety or the environment, if the operators of the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo comply with all of the following:

(a) The operators or crew of the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo complies at all times with all orders and directions given by the administrator, or his or her designee, while the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo is in marine waters of the state, unless the orders or directions are contradicted by orders or directions of the Coast Guard.

(b) Except for fuel, oil may be transferred to or from the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo while it is in marine waters of the state only if permission is obtained for the transfer of oil and one of the following conditions is met:

(1) The transfer is necessary for the safety of the crew.

(2) The transfer is necessary to prevent harm to public safety or the environment.

(3) An oil spill contingency plan is approved or made applicable to the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo, under subdivision (c).

(c) The tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo shall leave the marine waters of the state as soon as it may do so without imminent risk of harm to the crew, public safety, or the environment, unless an oil spill contingency plan is approved or made applicable to it under this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 28.)

§ 8670.35. Business and hazardous materials area plans; regulations regarding adequacy of contingency plan elements; local government grants; training fire and police personnel; consistency; review and approval; appropriation

(a) The administrator, taking into consideration the California oil spill contingency plan, shall promulgate regulations regarding the adequacy of oil spill contingency plan elements of business and hazardous materials area plans required pursuant to Section 25503 of the Health and Safety Code. In developing the guidelines, the administrator shall consult with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

(b) Any local government with jurisdiction over or directly adjacent to marine waters may apply for a grant to complete, update, or revise an oil spill contingency plan element.

(c) Each contingency plan element established under this section shall include provisions for training fire and police personnel in oil spill response and cleanup equipment use and operations.

(d) Each contingency plan element prepared under this section shall be consistent with the local government's local coastal program as certified under Section 30500 of the Public Resources Code, the California oil spill contingency plan, and the National Contingency Plan.

(e) The administrator shall review and approve each contingency plan element established pursuant to this section. If, upon review, the administrator determines that the contingency plan element is inadequate, the administrator shall return it to the agency that prepared it, specifying the nature and extent of the inadequacies, and, if practicable, suggesting modifications. The local government agency shall submit a new or modified plan within 90 days after the plan was returned, responding to the findings and incorporating any suggested modifications.

(f) The administrator shall review the preparedness of local governments to determine whether a program of grants for completing oil spill contingency plan elements is desirable and should be continued. If the administrator determines that local government preparedness should be improved, the administrator shall request the Legislature to appropriate funds from the Oil Spill Prevention and Administration Fund for the purposes of this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1999, c. 613 (A.B.503), § 1; Stats.2004, c. 796 (S.B.1742), § 27.)

§ 8670.36. Review of contingency plans; notice to state agencies; comments

(a) The administrator shall, within five working days after receipt of a contingency plan prepared pursuant to Section 8670.28 or 8670.35, send a notice that the plan is available for review to the state agencies that comprise the membership of the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee. The administrator shall send a copy of the plan within two working days after receiving a request from either committee. The State Lands Commission and the California Coastal Commission shall review the plans for facilities or local governments within the coastal zone. The San Francisco Bay Conservation and Development Commission shall review the plans for marine facilities or local governments within the area described in Sections 66610 and 29101 of the Public Resources Code. Any state agency or committee that comments shall submit its comments to the administrator within 60 days of receipt of the plan. The administrator shall consider all comments in approving or disapproving the plan.

(b) The State Interagency Oil Spill Committee may be reimbursed from the Oil Spill Prevention and Administration Fund for reasonable costs incurred in reviewing contingency plans and participating in public hearings on marine and vessel facility contingency plans.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.36.1. Small craft refueling dock operators; outreach program; registration; required information; regulations

(a) To reduce the damages and costs from spills, the administrator shall develop an outreach program to provide assistance to the operators of small craft refueling docks.

(b) The program shall include both of the following:

(1) Voluntary inspections by the administrator. The administrator shall prepare, and maintain on file, a written report recommending how any risk of a spill identified in those inspections may be reduced and how those recommendations could be implemented.

(2) An education and outreach program to inform small craft refueling dock operators and the operators of the vessels they serve of the obligations and potential liabilities from a spill. For the purpose of this section, "vessel" has the same meaning as in Section 21 of the Harbors and Navigation Code.

(c) To ensure effective implementation of the program, each small craft refueling dock shall register with the administrator prior to operating.

(d) The administrator may require information needed to evaluate whether a facility is a small craft refueling dock as defined in Section 8670.3. The administrator may also require any

pertinent information regarding the oil spill risk of a small craft refueling dock. This information may include, but shall not be limited to, the following:

- (1) The type of oil handled.
- (2) The size of storage tanks.
- (3) The name and telephone number of the small craft refueling dock operator.
- (4) The location and size of the small craft refueling dock.
- (e) The administrator may develop regulations to implement this section.

(Added by Stats.1992, c. 1313 (A.B.3173), § 3, eff. Sept. 30, 1992. Amended by Stats.2001, c. 748 (A.B.715), § 29; Stats.2004, c. 796 (S.B.1742), § 28.)

§ 8670.36.5. Contingency plans; format

Repealed by Stats.2004, c. 796 (S.B.1742), § 29.

Prior to Repeal: (Added by Stats.1993, c. 630 (A.B.1451), § 1.)

§ 8670.37. Improvement of plans or responses; studies

(a) The administrator, with the assistance of the State Lands Commission, the California Coastal Commission, and the executive director of the San Francisco Bay Conservation and Development Commission shall carry out studies with regard to improvements to contingency planning and oil spill response equipment and operations.

(b) To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, and other appropriate state and international entities, and duplication with the efforts of other entities shall be minimized.

(c) The administrator, the State Lands Commission, the California Coastal Commission, and the Executive Director of the San Francisco Bay Conservation and Development Commission, may be reimbursed for all costs incurred in carrying out the studies under this section from the Oil Spill Prevention and Administration Fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 30.)

§ 8670.37.5. Animal rescue and rehabilitation stations

(a) The administrator shall establish a network of rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters. The administrator shall consider all feasible management alternatives for operation of the network.

(b) The first rescue and rehabilitation station established pursuant to this section shall be located within the sea otter range on the central coast. The administrator shall establish regional oiled wildlife rescue and rehabilitation facilities in the Los Angeles Harbor area, the San Francisco Bay area, the San Diego area, the Monterey Bay area, the Humboldt County area, and the Santa Barbara area, and may establish those facilities in other coastal areas of the state as the administrator determines to be necessary. One or more of the oiled wildlife rescue and rehabilitation stations shall be open to the public for educational purposes and shall be available for marine wildlife health research. Wherever possible in the establishment of these facilities, the administrator shall improve existing authorized marine mammal rehabilitation facilities and may expand or take advantage of existing educational or scientific programs and institutions for oiled wildlife rehabilitation purposes. Expenditures shall be reviewed by the agencies and organizations specified in subdivision (c).

(c) The administrator shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Coastal Commission, the Executive Director of the San

Francisco Bay Conservation and Development Commission, the Marine Mammal Center, and the International Bird Rescue Center in the design, planning, construction, and operation of the rescue and rehabilitation stations. All proposals for the rescue and rehabilitation stations shall be presented before a public hearing prior to the construction and operation of any rehabilitation station, and, upon completion of the coastal protection element of the California oil spill contingency plan, shall be consistent with the coastal protection element.

(d) The administrator may enter into agreements with nonprofit organizations to establish and equip wildlife rescue and rehabilitation stations and to ensure that they are operated in a professional manner in keeping with the pertinent guidance documents issued by the Office of Oil Spill Prevention and Response in the Department of Fish and Game. The implementation of the agreement shall not constitute a California public works project. The agreement shall be deemed a contract for wildlife rehabilitation as authorized by Section 8670.61.5.

(e) In the event of a spill, the responsible party may request that the administrator perform the rescue and rehabilitation of oiled wildlife required of the responsible party pursuant to this chapter if the responsible party and the administrator enter into an agreement for the reimbursement of the administrator's costs incurred in taking the requested action. If the administrator performs the rescue and rehabilitation of oiled wildlife, the administrator shall primarily utilize the network of rescue and rehabilitation stations established pursuant to subdivision (a), unless more immediate care is required. Any of those activities conducted pursuant to this section or Section 8670.56.5 or 8670.61.5 shall be performed under the direction of the administrator. Nothing in this subdivision shall be construed as removing the responsible party from liability for the costs of, nor the responsibility for, the rescue and rehabilitation of oiled wildlife, as established by this chapter. Nothing in this subdivision shall be construed as prohibiting an owner or operator from retaining, in a contingency plan prepared pursuant to this article, wildlife rescue and rehabilitation services different from the rescue and rehabilitation stations established pursuant to this section.

(f)(1) The administrator shall appoint a rescue and rehabilitation advisory board to advise the administrator regarding operation of the network of rescue and rehabilitation stations established pursuant to subdivision (a), including the economic operation and maintenance of the network. For the purpose of assisting the administrator in determining what constitutes the best achievable treatment for oiled wildlife, the advisory board shall provide recommendations to the administrator on the care achieved by current standard treatment methods, new or alternative treatment methods, the costs of treatment methods, and any other information which the advisory board believes that the administrator might find useful in making that determination. The administrator shall consult the advisory board in preparing the administrator's submission to the Legislature pursuant to subparagraph (A) of paragraph (2) of subdivision (l) of Section 8670.48. The administrator shall present the recommendations of the advisory board to the Oil Spill Technical Advisory Committee created pursuant to Article 8 (commencing with Section 8670.54), upon the request of the committee.

(2) The advisory board shall consist of a balance between representatives of the oil industry, wildlife rehabilitation organizations, and academia. One academic representative shall be from a veterinary school within this state. The United States Fish and Wildlife Service and the National Marine Fisheries Service shall be requested to participate as ex-officio members.

(3)(A) The Legislature hereby finds and declares that since the administrator may rely on the expertise provided by the volunteer members of the advisory board and may be guided by their recommendations in making decisions that relate to operation of the network of rescue and rehabilitation stations, those members should be entitled to the same immunity from liability that is provided other public employees.

(B) Members of the advisory board, while performing functions within the scope of advisory board duties, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and

immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the advisory board.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1991, c. 614 (A.B.203), § 1, eff. Oct. 8, 1991; Stats.1993, c. 1202 (S.B.775), § 1; Stats.1995, c. 940 (A.B.1549), § 4; Stats.2001, c. 748 (A.B.715), § 31; Stats.2004, c. 796 (S.B.1742), § 30.)

Article 5.5. Financial Responsibility

§ 8670.37.51. Certificate of financial responsibility

(a) No tank vessel or vessel carrying oil as a secondary cargo may be used to transport oil across marine waters of the state unless the operator has obtained a certificate of financial responsibility issued by the administrator for that vessel or for the owner of all of the oil contained in and to be transferred to or from that vessel.

(b) No operator of a marine terminal within the state may transfer oil to or from a tank vessel or vessel carrying oil as a secondary cargo unless the operator of the marine terminal has received a copy of a certificate of financial responsibility issued by the administrator for the operator of that vessel or for all of the oil contained in and to be transferred to or from that vessel.

(c) No operator of a marine terminal within the state may transfer oil to or from any vessel that is or is intended to be used for transporting oil as cargo to or from a second vessel unless the operator of the marine terminal has first received a copy of a certificate of financial responsibility issued by the administrator for the person responsible for both the first and second vessels or all of the oil contained in both vessels, as well as all the oil to be transferred to or from both vessels.

(d) No person may operate a marine facility unless the owner or operator of the marine facility has first obtained a certificate of financial responsibility from the administrator for the marine facility.

(e) No tank vessel or vessel carrying oil as a secondary cargo may be used to transport oil across marine waters of the state unless, at least 24 hours prior to the transport, the administrator has received both of the following:

(1) A copy of a certificate applicable to that vessel or to all of the oil in that vessel at all times during transport.

(2) A copy of a written statement by the holder of the applicable certificate authorizing its application to the vessel.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990, operative Jan. 1, 1992. Amended by Stats.2001, c. 748 (A.B.715), § 32.)

§ 8670.37.52. Effect of certificate

The certificate of financial responsibility shall be conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel, marine facility, or oil for purposes of determining liability pursuant to this chapter.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.37.53. Qualifications for certificate of financial responsibility

(a) To receive a certificate of financial responsibility for a tank vessel or for all of the oil contained within such a vessel, the applicant shall demonstrate to the satisfaction of the administrator the financial ability to pay at least one billion dollars (\$1,000,000,000) for any damages that may arise during the term of the certificate.

(b) The administrator may establish a lower standard of financial responsibility for small tank barges, vessels carrying oil as a secondary cargo, and small marine fueling facilities. The standard shall be based on the quantity of oil that can be carried or stored and the risk of spill into marine waters. The administrator shall not set a standard that is less than the expected costs from a reasonable worst case oil spill into marine waters.

(c)(1) To receive a certificate of financial responsibility for a marine facility, the applicant shall demonstrate to the satisfaction of the administrator the financial ability to pay for any damages that might arise during a reasonable worst case oil spill into marine waters that results from the operations of the marine facility. The administrator shall consider criteria including, but not necessarily limited to, the amount of oil that could be spilled into marine waters from the facility, the cost of cleaning up spilled oil, the frequency of operations at the facility, and the damages that could result from a spill.

(2) The administrator may issue a certificate for a marine facility upon a lesser showing of financial resources for a period of not longer than three years if the administrator finds all of the following:

- (A) The marine facility was operating on January 1, 1991.
- (B) Continued operation is necessary to finance abandonment of the marine facility.
- (C) The financial resources the operator is able to demonstrate are reasonably sufficient to cover the damages from foreseeable spills from the facility.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.1994, c. 847 (S.B.1443), §1; Stats.1994, c. 1298 (A.B.3425), § 4; Stats.1995, c. 25 (S.B.153), § 1, eff. June 28, 1995; Stats.2001, c. 748 (A.B.715), § 33.)

§ 8670.37.54. Evidence of financial responsibility

(a) For the purposes of this chapter, financial responsibility may be demonstrated by evidence of insurance, surety bond, letter of credit, qualifications as a self-insurer, or any combination thereof or other evidence of financial responsibility.

(b) In adopting requirements under this article, the administrator may specify policy or other contractual terms, conditions, or defenses which are necessary or which are unacceptable in establishing evidence of financial responsibility, in order to effectuate the purposes of this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.37.55. Multiple vessels or facilities; coverage by certificate

(a) An owner or operator of more than one tank vessel, vessel carrying oil as a secondary cargo, nontank vessel, or marine facility shall only be required to obtain one certificate of financial responsibility for all of those vessels and marine facilities owned or operated.

(b) If a person holds a certificate for more than one tank vessel, vessel carrying oil as a secondary cargo, nontank vessel, or marine facility and a spill or spills occurs from one or more of those vessels or marine facilities for which the owner or operator may be liable for damages in an amount exceeding 5 percent of the financial resources reflected by the certificate, as determined by the administrator, the certificate shall immediately be considered inapplicable to any vessel or marine facility not associated with the spill. In that event, the owner or operator shall demonstrate to the satisfaction of the administrator the amount of financial ability required pursuant to this article, as well as the financial ability to pay all damages that arise or have arisen from the spill or spills which have occurred.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990. Amended by Stats.2001, c. 748 (A.B.715), § 34.)

§ 8670.37.56. Suspension of certificate

If the administrator determines that, because of a spill outside of the state or some other action or potential liability, the holder of a certificate may not have the financial resources to pay damages for the spill or liability and have resources remaining available to meet the requirements of this chapter, the administrator may suspend the certificate.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.37.57. Term of certificate

No certificate of financial responsibility shall have a term greater than two years. The administrator may issue certificates for shorter periods where appropriate.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.37.58. Nontank vessels on marine waters; financial responsibility

(a) A nontank vessel required to have a contingency plan pursuant to this chapter shall not enter marine waters of the state unless the nontank vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars (\$300,000,000) to cover damages caused by a spill, and the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel.

(b) Notwithstanding subdivision (a), the administrator may establish a lower standard of financial responsibility for a nontank vessel that has a carrying capacity of 6,500 barrels of oil or less, or for a nontank vessel that is owned and operated by California or a federal agency and has a carrying capacity of 7,500 barrels of oil or less. The standard shall be based upon the quantity of oil that can be carried by the nontank vessel and the risk of an oil spill into marine waters. The administrator shall not set a standard that is less than the expected cleanup costs and damages from an oil spill into marine waters.

(c) The administrator may adopt regulations to implement this section.

(Added by Stats.2001, c. 748 (A.B.715), § 35. Amended by Stats.2002, c. 207 (S.B.1513), § 1; Stats.2002, c. 514 (S.B.849), § 1; Stats.2005, c. 147 (A.B.752), § 1.)

§ 8670.37.58. Nontank vessels on marine waters; certificate of financial responsibility

Repealed by Stats.2005, c. 147 (A.B.752), § 2.

Prior to Repeal: (Added by Stats.2001, c. 748 (A.B.715), § 36, operative Jan. 1, 2003. Amended by Stats.2002, c. 207 (S.B.1513), § 2, operative Jan. 1, 2006; Stats.2002, c. 514 (S.B.849), § 2, operative Jan. 1, 2006.)

Article 6. The Oil Spill Prevention and Administration Fund**§ 8670.38. Fund created**

(a) The Oil Spill Prevention and Administration Fund is hereby created in the State Treasury. The money in the fund is available for appropriation by the Legislature and may only be used for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(b) For the purposes of this article, "fund" refers to the Oil Spill Prevention and Administration Fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.39. Administration of fund

- (a) The administrator shall administer the fund in accordance with this article.
- (b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out and enforce this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

§ 8670.40. Oil spill prevention and administration fee; collection; use

(a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents (\$0.05) per barrel of crude oil or petroleum products.

(b)(1) The oil spill prevention and administration fee shall be imposed upon every person owning crude oil at the time that the crude oil is received at a marine terminal from within or outside the state, and upon every person owning petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. No fee shall be imposed pursuant to this section with respect to any crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) Every owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of any expenditure for this purpose shall not exceed the amount of one hundred thousand dollars (\$100,000) in any fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993-94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars (\$100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(8) To reimburse the costs incurred by the State Lands Commission in implementing the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002 (Division 7.9 (commencing with Section 8780) of the Public Resources Code).

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

(Added by Stats.1991, c. 10 (S.B.7), § 3.5, eff. Dec. 13, 1990, operative July 1, 1991. Amended by Stats.1991, c. 300 (A.B.1409), § 2, eff. Aug. 1, 1991; Stats.1992, c. 1313, (A.B.3173), § 5, eff. Sept. 30, 1992; Stats.1992, c. 1314 (S.B.2025), § 4 Stats.2002, c. 512 (A.B.2083), § 1; Stats.2002, c. 514 (S.B.849), § 3.5; Stats 2003, c. 62 (S.B.600), § 111.)

§ 8670.41. Nontank vessel owners or operators; fee; collection; use

(a) The administrator shall charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing this chapter relating to nontank vessels. Before January 1, 2005, the fee shall be two thousand five hundred dollars (\$2,500), or less per vessel.

(b) The administrator may charge a reduced fee under this section for nontank vessels determined by the administrator to pose a reduced risk of pollution, including, but not limited to, vessels used for research or training and vessels that are moored permanently or rarely move.

(c) The administrator shall deposit all revenue derived from the fees imposed under this section in the Oil Spill Prevention and Administration Fund established in the State Treasury under Section 8670.38.

(d) Revenue derived from the fees imposed under this section may be spent for the purposes listed in subdivision (e) of Section 8670.40, and may not be used for responding to an oil spill.

(Added by Stats.2002, c. 514 (S.B.849), § 4. Amended by Stats.2004, c. 796 (S.B.1742), § 31.)

§ 8670.42. Program Assessment Report

The Department of Fish and Game shall contract with the Department of Finance for the preparation of a detailed report that shall be submitted on or before January 1, 2005, to the Governor and the Legislature on the financial basis and programmatic effectiveness of the state's oil spill prevention, response, and preparedness program. This report shall include an analysis of all of the oil spill prevention, response, and preparedness program's major expenditures, fees and fines collected, staffing and equipment levels, spills responded to, and other relevant issues. The report shall recommend measures to improve the efficiency and effectiveness of the state's oil spill prevention, response, and preparedness program, including, but not limited to, measures to modify existing contingency plan requirements, to improve protection of sensitive shoreline sites, and to ensure adequate and equitable funding for the state's oil spill prevention, response, and preparedness program.

(Added by Stats.2002, c. 514 (S.B.849), § 5.)